

REMARKS

This paper addresses the issues raised in the Office Action made Final mailed 28 October 2005, and again in the Advisory Action of 19 April 2006. This amendment is submitted in compliance with the guidelines of the revised amendment practice. See 1267 Off. Gazette 106.

Claims 1, 3, 4, 6, 7, 10, 12, 13, and 15-22 are currently pending. All pending Claims were rejected under 35 U.S.C. § 103(a) as being unpatentable in light of Rylander (USPN 4749011) in view of Steinmetz (USPN 5884454) and Mezzanotte (USPN 3736973). As set out below, Applicant respectfully submits that the present invention as claimed is patentable over the cited art and urges the Examiner to reconsider the pending rejections.

Claims Rejection - 35 U.S.C. § 103(a)

The Examiner has rejected all pending Claims under 35 U.S.C. § 103(a) as being unpatentable in light of Rylander (USPN 4749011) in view of Steinmetz (USPN 5884454) and Mezzanotte (USPN 3736973). It is submitted that these references do not render these Claims as unpatentable. The combination of these references is not proper, nor if they are properly combined would they produce the invention as set forth in the pending Claims. Reconsideration is respectfully requested.

Claims 1, 16 and 21 are independent claims, with Claim 1 being the broadest. It reads as follows:

A removable internal support for a flexible container having an open end, said support comprising:

a panel of generally flat planar configuration having a first surface, a second surface, a top edge, a bottom edge, and a pair of opposed lateral edges and constructed from a first material sufficiently flexible for responding to pressure against one face thereof for deforming into a substantially cylindrical configuration; and

at least one memory retention unit being imbedded in said panel and constructed from a second material sufficiently flexible for responding to pressure thereon for deforming into said substantially cylindrical configuration and having sufficient memory characteristics for returning said panel body to its normal flat planar configuration when said pressure has been removed therefrom.

In rejecting these claims, the Examiner concluded that the combination of Rylander, Steinmetz and Mezzanotte would render these claims obvious. In making this rejection, the Examiner stated that it would have been obvious to provide the rod of Steinmetz in the plastic sheet of Rylander because "it is well known that one or more metal cords can be imbedded in a polymer to strengthen and add rigidity as taught by Mezzanotte et al. which provides a material that meets the requirements and purpose of Rylander." Thus, the Examiner is relying upon Mezzanotte to provide the link between the Rylander and Steinmetz references.

For Mezzanotte to be a proper reference it must first be analogous, i.e. must be same field of endeavor as the present application or reasonably pertinent to the problem set out in the present application. It is submitted that it is neither.

It is fairly clear this reference is not in the field of endeavor. It is directed toward the radial tire art not toward products associated with the packaging of trash, grass, lawn clippings, leaves, debris or other waste products. This position is not just argument, but is support by the affidavit of Mr. Nickolas Rylander, which is attached to the paper.

Secondly, this reference does not reasonably pertinent to the problem of set out in the present application. To support the inclusion of this reference, the Examiner stated "Mezzanotte solves a specific problem and therefore does not need to be in [the] field of art of the inventor's endeavor as stated in MPEP 2141.01(a)" It goes without saying that every patent issued solves a specific problem. However, to be analogous, it must logically commend itself to the attention of the inventor. See, MPEP 2141.01(a). In this case, a reference that teaches making a rubber or like material stiff and non-flexible would not be one that an inventor of a flexible insert, such as the present invention or the Rylander device, would consider. Mr. Rylander in his affidavit indicates that this reference would not be one he would consider due to its teaching on increasing stiffness and non-flexibility of its materials.

The Examiner, in the Advisory Action, however stated that Mezzanotte has the broad teaching of embedding metal cords to a polymer to add strength and rigidity. Additionally, the Examiner reliance upon Mezzanotte was to provide material that meets the purpose of Rylander, which was to provide a **flexible** panel. Thus, according to the Examiner's statements, he relied upon Mezzanotte to provide flexible material having metal cords therein. However, as required to be analogous, this teaching must be logically related to and reasonably pertinent to the problem set out in the present application, i.e creating a flexible panel.

Mezzanotte does not teach adding metal cords to maintain flexibility. In its specific teachings, it teaches how to stiff a radial tire. In a more broad sense, it teaches how to stiffen and reduce flexibility to rubber or similar material. This is not the purpose of Rylander. Rylander and Steinmetz are concerned with maintaining flexibility. In fact, Steinmetz discusses the impact of stiffness has on his device. (See, Col. 4, line 61- Col. 5, Line 23). In this discussion, Steinmetz discloses that the greater the stiffness, the less flexible his device. This discussion goes on to disclose that the Steinmetz rod stiffness was so great that it had to be “thermoformed”, i.e. permanently shaped under heat, in order to function. Clearly, stiffness is not a characteristic wanted or desired in either Rylander or Steinmetz. As such, the Mezzanotte is analogous.

Regarding the reliance of the Steinmetz patent, the Applicant maintains that this reference would not be one that a person skilled in the art would consider combining with the teaching set out in the Rylander patent.

The Rylander patent discloses a device for use with a flexible bag to hold the bag open to allow access to its interior. It includes a substantially flat body being constructed from a sufficiently flexible material to allow for its deformation and insertion into the previously stated flexible bag. One such material, as set in the '011 Patent, is a polycarbonate material having a thickness of 0.060 inch. The flexible material also has sufficient memory characteristics such that the body will open back into its initial flat configuration upon being removed from the bag. Moreover, this reference does not teach any sort of penetrate into any part of the flexible bag, nor tear or rip into the bag.

The Steinmetz patent, however, teaches the insertion of a rod into either the hem of a bag or through the bag itself. This device thus just merely keeps open the opening portion of the bag requiring the user to hold the bag up when filing its interior, whereas the Rylander device can be a stand along device.

Additionally, the rod thickness of the Steinmetz patent would add too great of stiffness to the Rylander device. As taught by Steinmetz, see above, the greater the thickness, the greater the stiffness, making these two devices incompatible.

While both patents teach and disclose an aid in the bagging of waste material, that is where the similarities end. The Rylander patent teaches a flat body that is inserted into the interior of a bag. Steinmetz's patent teaches a thick rod, having either a pointed end or square end for penetrating either the hem of the bag or the bag itself. Thus, based on these

differences one skilled in the art would not combining these two devices. See Affidavit of Mr. Rylander attached hereto.

Regarding the Affidavit of Mr. Rylander attached hereto, it specifically states that as one of skill in the art, he would not consider combining either the teachings of the Steinmetz or Mezzanotte patents with the teachings of his patent. This basis for this statement was due to his experience in designing and developing his device. In the Advisory Action, the Examiner discounted the earlier affidavit by Mr. Rylander and in so doing indicated that his statements were just statements without any evidence of proof. While the Applicant expressly disagrees with the Examiner's opinion regarding Mr. Rylander's earlier affidavit, the Applicant submits that this second Affidavit sets forth the factual basis for Mr. Rylander's position that he, as one skilled in the art, would not consider combining either Steinmetz or Mezzanotte with his patent. Accordingly, these statements should be sufficient evidence to demonstrate the present invention as claimed to be non-obvious. See MPEP 716.01(c). *See also In re Oelrich*, 579 F.2d 86, 198 USPQ 210 (CCPA 1978) (factually based expert opinions on the level of ordinary skill in the art were sufficient to rebut the prima facie case of obviousness).

Conclusion

Based on the above, the Applicant respectfully submits the claimed invention is not rendered obvious by the references cited by the Examiner, and that they are in a condition for allowance. A two month extension fee is due and is include herewith. If any additional fees are due with this paper, please contact the undersigned.

Respectfully submitted,


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